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Judge Tom Lowe



PROBATE CODE STUDY COMMISSION

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Authority: IC 2-5-16-2

MEETING MINUTES¹

Meeting Date: September 21, 2005
Meeting Time: 10:00 A.M.
Meeting Place: State House, 200 W. Washington
St., Room 404
Meeting City: Indianapolis, Indiana
Meeting Number: 2

Members Present: Sen. Joseph Zakas, Chairperson; Sen. Rose Antich-Carr; Rep. Ralph Foley, Vice-Chairperson; Rep. Eric Koch; Rep. Robert Kuzman; Tim Sendak; Dave Pendergast; Tom Hardin; Kris Fruehwald; Dan Reeves; Jim Martin; Ora Kincaid.

Members Absent: Sen. Murray Clark; Chris Colpaert; Joseph H. Davis; Judge Tom Lowe.

I. Call to order

Sen. Joseph Zakas called the meeting to order. The meeting was devoted to two topics: a discussion of the Indiana living will law and related health care consent issues; and a review of legislative proposals recommended by the Probate, Trust, and Real Property Section of the Indiana State Bar Association.

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

II. Living wills and related health care consent issues

The discussion began with Sen. Tim Lanane reviewing the reasons that he introduced Simple Resolution 62-2005 urging the Legislative Council to direct the Commission to engage in the present study of the living will law. Sen. Lanane related his experiences with the law as an attorney who does not practice in the area but has to look at the statutes from time to time and in his personal life during the course of his mother's final illness and death earlier this year. Sen. Zakas and several members of the Commission engaged Sen. Lanane in a detailed conversation about hypothetical situations and particular provisions of the Indiana Code. The following members of the audience joined the discussion to lend their expertise: Mr. John VanderZee, chaplain of the Bloomington Hospital; Ms. Danielle Hoover, M.D.; Ms. Donna Haines, Administrative Director for Palliative Care for Clarian Health Care Partners; and Ms. Mary Hill, Director of Ethics Integration, St. Vincent Hospital. Much of the discussion focused upon hospital practices and the interaction of the living will, health care representative, and power of attorney laws. This discussion culminated with Mr. Dave Pendergast asking Ms. Hill whether the living will statute is adequate. Ms. Hill replied that it is.

Sen. Zakas then recognized Mr. VanderZee to testify more formally before the Commission. Mr. VanderZee expressed his concern that the statutory living will form is confusing. Mr. VanderZee also stated his preference for the use of a health care representative appointment that would include instructions for the health care representative with respect to particular treatments.

Ms. Haines was the next to testify. Ms. Haines said that practitioners can live with any form. Ms. Haines explained the content of the form is not as important as the discussions families must have about the decisions that must be made in the palliative care setting. Ms. Haines noted that a failure to have the discussion can cause the situation to break down and that the General Assembly cannot legislate good family dynamics. When asked about the potential for family conflicts, Ms. Haines replied that the strategy is to reduce the likelihood of acrimony later by involving everyone in the decision making process. In cases where one individual has the decision making authority, the individual's decisions will reflect a family consensus.

The next person to address the Commission was Mr. Glenn Tebbe, representing the Indiana Catholic Conference. Mr. Tebbe provided the Conference's opinion on a number of issues that had arisen during the course of the meeting. With respect to the interaction between the living will and the appointment of a health care representative, Mr. Tebbe stated that the living will should be viewed as a supplement to the decision making process rather than as the sole expression of the patient's intent. Mr. Tebbe testified that the use of health care representatives should be encouraged and suggested combining the health care representative and living will forms.

Mr. Mark Scherer, representing the Indiana Health Care Association, concluded the public testimony on the living will issue. Mr. Scherer reported that as counsel to the association he fields more questions about advance directives than about any other topic. He stated that the use of advance directives should be encouraged and that consolidating the documents within the statutes would be worthwhile.

Following Mr. Scherer's remarks, the Commission recessed for a lunch break. The Commission reconvened at 1:20 p.m. and discussed various legislative options within the advance directive laws.

III. Legislative changes proposed by the state bar

Mr. Ross Hooten reviewed several preliminary drafts reflecting the statutory changes proposed by the Probate, Trust, and Real Property Section of the Indiana State Bar Association at the Commission's August 30 meeting. Each of the following preliminary drafts may be obtained from the Legislative Information Center:

PD 3033	Adult adoptions and Class A transferee status (Exhibit 1)
PD 3034	Class B and Class C transferee exemption amounts (Exhibit 2)
PD 3035	Small estates (Exhibit 3)
PD 3042	Uniform Income and Principal Act (Exhibit 4)
PD 3043	Trustee powers (Exhibit 5)
PD 3047	Powers of personal representative (Exhibit 6)
PD 3062	Taking against a will by a subsequent childless spouse (Exhibit 7)

Mr. Hooten also explained that the Section's proposals pertaining to living trusts and due on sale clauses were being reconsidered in light of information provided to the Section following the August 30 meeting. The Commission briefly discussed the drafts before taking public testimony.

Mr. James Cousins, representing the Indiana Bankers' Association, explained to the Commission that any statutory changes recommended by the Commission must include affirmative protection of creditors rights. Mr. Cousins warned that limiting the right of foreclosure has serious implications particularly in the commercial area.

Mr. Ted Nowacki, Bose, McKinney, & Evans, explained to the Commission the nature of the federal laws preempting state action with respect to due on sales clauses and that a transfer to a living trust is protected from the application of a due on sale clause by 12 CFR 591.5 (Exhibit 8).

IV. Adjournment

Sen. Zakas adjourned the meeting at approximately 3:20 p.m.